

## **CHARTER COMMISSION**

**February 12, 2003**

**5:00 PM**

Chairman Dykstra called the meeting to order.

The Clerk called the roll.

Present: Leona Dykstra, Bob Shaw, Donna Soucy, Brad Cook, Patrick Duffy,  
Keith Hirschmann, Leo Pepino, Nancy Tessier, Michael Wihby

Messr: Deputy Solicitor Arnold

Chairman Dykstra addressed item 3 of the agenda:

. Minutes of a meeting held on February 5, 2003.

On motion of Commissioner Duffy, duly seconded by Commissioner Cook, it was voted to accept the February 5, 2003 minutes.

Chairman Dykstra addressed item 4 on the agenda:

Notice of Reconsideration by Chairman Dykstra on action taken with regard to a motion to amend a main motion "that the current (1996) charter sections 3.11 and 3.12 serve as language for the new charter" by deleting the Airport Authority and the Water Department from such section for discussion at a future date.

(Such amendment having carried with Commissioners Cook, Duffy, Hirschmann, Soucy and Tessier voting in favor, and Commissioners Pepino, Shaw, Wihby and Dykstra voting in opposition.)

Chairman Dykstra stated right now, I'm just going to speak to my notice of reconsideration. We'll move along on this. I'm not going to dwell on it. I'm going to ask right now for a yes vote on reconsideration and that was basically the motion that Commissioner Pepino brought forth on Section 3.11 and 3.12, and it had to do with involving the commission to be advisory among other things, and right now I believe that the Airport Authority and the Water Department certainly should be included, and they should all be advisory. So right now, I have that motion on the floor for reconsideration. I ask for a yes vote, but I also ask for a second to that motion.

Commissioner Pepino duly seconded the motion.

Commissioner Cook stated a point of clarification. What we are reconsidering is which vote?

Chairman Dykstra stated the amendment, your amendment.

Commissioner Cook stated the amendment to delete the two but not reconsider Commissioner Pepino's motion.

Chairman Dykstra responded no. What I asked for reconsideration of, Commissioner, was not Commissioner Pepino's motion, but it was your amendment to delete.

Commissioner Cook stated all right, fine, thank you.

Chairman Dykstra stated any other clarification needed.

Commissioner Duffy stated Madame Chair, isn't the vote on reconsideration at the moment is to see whether or not we're going to take a vote.

Chairman Dykstra stated right. After the vote for reconsideration, if it is voted yes that we reconsider, then there's going to be a motion on the floor to vote for that amendment you voted up or down. Is everybody clear on that? Is there any discussion?

Deputy Clerk Johnson stated you're looking for a vote on the motion to reconsider which is on the floor.

Chairman Dykstra stated right. I asked for discussion on that motion for reconsideration. You voted to second that reconsideration. We are now asking for discussion. Is there any discussion? If not, I will take a vote on that motion for reconsideration.

Commissioner Shaw asked what's the difference between item four and item six.

Chairman Dykstra responded item six has to do with elected positions.

Commissioner Shaw stated okay, thank you.

Commissioner Dykstra stated right now, if there's no discussion, I'll just call...

Commissioner Hirschmann moved the question.

Chairman Dykstra stated we're going to have a roll call vote. Carol, call the roll.

Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra voted yea.  
Commissioners Cook, Duffy, Soucy, and Tessier voted nay. The motion carried.

Chairman Dykstra stated we have moved yes for reconsideration. Right now, I believe the amendment is now on the floor, and a motion is in order at this time.

Deputy Clerk Johnson noted actually it places the motion back on the floor.

Chairman Dykstra stated the amendment.

Deputy Clerk Johnson noted the motion to amend which was to delete the Airport Authority and the Water Department from that section. That is on the floor, and you could actually be calling for discussion or a vote.

Chairman Dykstra stated that is on the floor, so we'll ask for discussion on that amendment.

Commissioner Duffy stated Madame Chair, at the last meeting this is an item that we had an opportunity to discuss, but not in the kind of detail, I think it deserves. I feel that we haven't had a chance to do the research on this matter. I think that it is only appropriate that we again defer on acting on this matter until such time as that research has been completed. I've taken the liberty of making some contacts with other entities in City government that have other kinds of structures, and quite honestly it's been premature to try and get any of the data that I'm looking for, and I would hope that I can get assist also from the staff on this once we get some of the preliminaries, but to move forward on this this evening at this stage is premature, and I urge my fellow Commissioners to continue this matter until a future date at which time we'll have more data on which to have our deliberations.

Chairman Dykstra stated as you know, this is in the current Charter. Is there any further discussion on this?

Commissioner Shaw stated I don't favor singling out any one department to be different than other departments, and I would gladly go along with the Commissioner who just spoke if he was to say that all Commissioners in the city of Manchester were to have some kind of a role. I mean, I favor that, but I don't favor any one department as being superior whether they raise all their money or don't raise a cent. I don't favor that at all, so that's my position on the issue.

Commissioner Duffy responded I'm certainly willing to consider having all commissions' role better defined than it is currently defined in the existing Charter. Therefore, this is a matter that needs again further review, research, and discussion before we're ready to vote on it.

Commissioner Hirschmann stated I'd say that we move to the question that's on the floor, that we had a week to reconsider, and we all did our homework in the background, not necessarily in the committee form, but I'm ready to move to the question at hand.

Commissioner Dykstra stated there's a motion to move the question, so we're going to call the roll. Roll call vote on the amendment. Second by Commissioner Pepino. We'll now take a vote.

Commissioner Cook asked a parliamentary inquiry. If I vote yes, I'm voting in favor of the amendment that was already passed? Is that correct?

Chairman Dykstra responded that's correct.

Deputy Clerk Johnson confirmed that's correct.

Chairman Dykstra stated if you vote no, you're voting against that amendment. So basically, I'm asking for a no to the amendment.

Commissioners Cook, Duffy, Soucy, and Tessier voted yea. Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra voted nay. The motion failed.

Commissioner Hirschmann stated I'd like to make a new motion, Your Honor. Am I allowed to do that?

Chairman Dykstra stated right now we have a main motion on the floor. I believe Carol if you can correct me that once we have voted down that amendment, now the main motion by Commissioner Pepino is on the floor.

Deputy Clerk Johnson stated the amendment failed, and the main motion would be that the current 1996 Charter Sections 3.11 and 3.12 serve as the language for the new Charter. That would then include the Airport Authority and the Water Department.

Commissioner Hirschmann seconded the motion.

Commissioner Duffy stated by moving on the existing motion, it's to accept as I understand it 3.11 and 3.12 in the existing Charter, not the Charter...

Chairman Dykstra noted that's correct.

Commissioner Duffy stated in doing so, will we have an opportunity to revisit some elements relative to the future role of boards and commissions because again we've had ample testimony before this Charter Commission relative to the fact that the section that was put in by the last Charter Commission which was 2.04, power to delegate, has been ineffective and has been inoperable, and the fact is we've also had testimony from a number of commission board members who came before us and indicated please give us some idea as to what it is that's expected of us because quite honestly people on those boards and commissions are being asked to serve and use their valuable time to serve the City and to serve their respective board without having any clear direction as to what is expected of them.

Commissioner Shaw stated in light of my idea that motions must be made because you understand what you want to do and a second must be made to that, so I'm going to make a motion which I hope Commissioner Duffy will amend...

Chairman Dykstra stated there's a motion on the floor.

Commissioner Shaw stated...add to it his ideas of what a commission should be, but I had given you a slip of paper of motions I hope to make today, and I'm going to make a motion which is listed on my sheet of paper, number 11. I understand that I can make motions.

Chairman Dykstra stated yes, but there's a motion on the floor. We have to take care of this.

Commissioner Shaw questioned what motion is that. Nobody's heard from you.

Chairman Dykstra stated yes, there's a motion on the floor right now, Commissioner Pepino's motion to accept Sections 3.11 and 3.12, the advisory back again.

Commissioner Shaw stated so then let me make an amendment to his motion, and that is to add a task to all commissioners. So he's putting two back, and I'd like to amend his that in addition to putting two back that commissioners now be required on the first week of January of the several departments must submit an annual report of their views on issues facing the respective departments of the BMA. This report must include any dissenting views. It is meant to convey the ideas and suggestions of all commissioners. So in other words, they have a role. It's a role that takes effect every January, and they must do it. Okay, and as I said, I'm making an amendment.

Chairman Dykstra stated that's in order.

Commissioner Shaw stated and then I need a second to that if I'm so lucky to get it.

Chairman Dykstra stated you will get that.

Commissioner Shaw stated and then I need Commissioner Duffy to propose an addition to my things. He can add what things he thinks commissioners should do.

Chairman Dykstra stated you presume too much, Commissioner.

Commissioner Cook duly seconded the motion.

Commissioner Soucy stated I just have a question for Commissioner Shaw. The way this motion is worded it appears that you want one report from the whole commission, including minority reports. I just want to make sure I understand.

Commissioner Shaw stated no, I don't want one report. I want dissents. That's why I added in there. Let's say the commission is 3-2, okay. I expect the board to hear the dissent of the two commissioners that have it. So that's why I said at the end of this here, it's meant to convey the ideas and suggestions of all commissioners. If the board wishes to submit and is unanimous in its views, of course that's good enough, but let's just say one doesn't care for those views, I think that should be heard by the Board of Aldermen in a written report. In other words, they have a task. You notice, I didn't say it has to go to the department head. It goes to the Board of Mayor and Aldermen. I hope that explains it.

Chairman Dykstra stated any further discussion. We're going to take a vote on that then.

Commissioner Cook voted yea.

Commissioner Duffy stated I need to be able to add to that amendment before I'm ready to vote on it because as Commissioner Shaw has already indicated, whereas this does approach some of the things that I'm looking for, it is not complete. Therefore, I'm not in a position to vote on it at this moment.

Chairman Dykstra stated I understand, but just to let you know also that even once we pass this, you certainly can bring up another motion pertaining to this. I mean we could amend this 20 times, but you still have that right to make a motion after we've finished with this.

Commissioner Duffy stated with reserving that right to modify this amendment, I'll vote yes.

Commissioners Cook, Duffy, Shaw, Soucy, Tessier, Wihby, and Dykstra voted yea. Commissioners Hirschmann and Pepino voted nay. The motion carried.

Commissioner Hirschmann stated I want to make a point of order to the City Clerk. We've adopted the rules of the Aldermanic Board to serve our committee, and under Section 9.03, I'm supposed to report to the City Clerk conflicts of interest, and I'm asking that Commission member Soucy not be voting on the status of any commission appointments or anything to do with commissions because she is a sitting Fire Commissioner, and I believe one of her family members is a commissioner so I think that you should refrain and maybe even retract some of your votes.

Chairman Dykstra stated are you going to be answering that Carol because I do want to address that too.

Commissioner Shaw asked to speak to that.

Commissioner Hirschmann stated the rule of the board says that I'm supposed to disclose the conflict to the clerk which I have just done. If the official does not believe such a conflict exists, the Board shall make a determination. I guess we're the Board.

Chairman Dykstra stated I'm going to speak right after this because when I basically authored the City's first conflict of interest ordinance—it is an ordinance. We have an ordinance on the books where a member of any board or commission can basically ask, call a person in conflict, then a vote shall be taken. Now, it's non-binding, but it still is a vote taken by this Board, and you do have the right, Commissioner Hirschmann to call that a certain Commissioner is in conflict. If you get a second, then a vote is taken.

Commissioner Hirschmann stated I'll ask for a second.

Chairman Dykstra stated do I have a second to that. I will second it.

Commissioner Shaw stated well, I think we put in there which is quite clear an escape clause, if the Board feels that a conflict doesn't exist, then the Board should take a vote on that. That's quite...

Chairman Dykstra responded right, that's what we were doing. We were taking a vote. I agree.

Commissioner Cook stated certainly, everybody's against conflicts, but how it can be a conflict to debate the role of a commission as set forth in the Charter of the City when someone is sitting as a Commissioner is beyond me. There's no monetary aspect to it. There's no enrichment thing to it. The only thing I can think of somebody learning or bringing to the Commission because they're a Commissioner, this Commission because they're a Commissioner in a departmental commission, is some knowledge about how it actually works, and if this vote were on, all commissioners will be paid \$2000 for their service, I think that would be a conflict. If it were even perhaps all commissions are, and I still don't know where the conflict comes from but I could see it if the commission were being deleted and you were on it, you might want to think about it. But there's a difference between a duality of function in the law, and there is in a conflict, and I would like Commissioner Hirschmann to enlighten me on why this isn't a duality of purpose as opposed to a conflict.

Commissioner Hirschmann stated I'll speak to that. The Commissioner, Commissioner Soucy is actually voting on her powers that she has and she will have in the future. If she wants to resign as a Fire Commissioner, I think she has the right to vote.

Commissioner Cook asked why is that a conflict.

Commissioner Hirschmann stated I'm not in a dialogue with you, sir. I have the floor. She has a conflict of interest. She is voting on a position that she now holds which no other person in Manchester holds. She has a status. She is a Commissioner of fire protection, and we are now voting on commissions. Her father is a sitting Water Commissioner. We're voting on his powers and duties. I clearly see the conflicts here, sir.



Commissioner Soucy stated since the motion pertains to me, I'd like the opportunity to speak to it, and I would like to encourage my colleagues to vote against this motion. I ran for this office as did 74 other people and was elected to serve on this Charter Commission to debate all of the issues relative to the Charter. I was a sitting Fire Commissioner when I ran. I continue to be a Fire Commissioner. Whether, as a Fire Commissioner, I file a report, whether the Commission serves as advisory is not in my opinion, nor can I see any basis for concluding that it is in any way a conflict of interest, that I personally gain or derive anything from this discussion or debate, and if I did feel there was a conflict or even the potential, I certainly would recuse myself from any vote, but there is nothing that this Commission has entertained to date that would cause me to even consider my role as a Fire Commissioner, my role as a Charter Commissioner, to be in conflict.

Chairman Dykstra stated I just wanted to address this and then Commissioner Duffy. Just to clarify. We're looking for that ordinance now. It's not in the red book. It's an ordinance that took me a year to pass before the Board of Mayor and Aldermen. It has to do with all boards and commissions, all boards and commissions. We are a Commission. It has to do with the Mayor. It has to do with Planning Boards, Zoning Boards, that if you feel there was a conflict...I used it one time against Alderman Dolman when he was voting on a school budget and you know, the City Solicitor at that time, Elmer Bourque, did rule that in fact that was correct. What it does, it's something that brings forth whether a person is in conflict or not, and the thing is, it doesn't have to be financial. It can be personal. It's a personal or financial difference other than any other citizen. So I mean I just wanted to clarify that, and we are looking for that ordinance now, and Commissioner Duffy, you have the floor.

Commissioner Duffy stated I think the examples that have been cited, yours included, do not get to the issue. I am confident that Commissioner Soucy is well able to make a value judgement about these matters that we're discussing and making a vote on it. I find it particularly interesting that Commissioner Hirschmann is concerned about the powers of the boards and commissions which virtually have been neutered as a result of the action taken by the previous Charter Commission, so to suggest that we're talking about something significant here is, all we're trying to do is get some discussion going, and you're trying to take out of play one of the Commissioners or suggesting that she resign from sitting on an existing board which quite honestly doesn't carry any weight so to speak because that was removed at the last Charter. So, I think we ought to get on with getting some meaningful discussion, instead of playing some of these political games.

Commissioner Hirschmann stated I'd like to speak to that. I'm not playing political games, sir, and I detest that comment, I really do. All I'm doing is staying within the guidelines that we've adopted as a body. We adopted rules for this Commission to follow. So I pull out the rulebook, and the rulebook says that if someone has a conflict, you state it to the clerk. Now, obviously everyone in the room knows she's a Fire Commissioner and that her father is a Water Commissioner, and it is not appropriate to be voting on powers of a position that you hold yourself. I asked her if she'd retract her vote, that's all.

Chairman Dykstra asked if there was any further discussion. We'll have to call for a vote. Call for the vote, Carol. We're voting whether Commissioner Soucy is in conflict.

Commissioner Cook stated so if I vote yes, I am saying she has a conflict.

Chairman Dykstra stated that's correct, sir.

A roll call vote was taken. Commissioners Hirschmann, Pepino, and Dykstra voted yea. Commissioners Cook, Duffy, Shaw, Soucy, Tessier, and Wihby voted nay. The motion failed.

Commissioner Hirschmann stated point made.

Chairman Dykstra stated right now, I have to clarify where we are now. I believe we have the main motion before us that has to do with...if you could clarify that Carol. Right now, we had a motion on the floor, and there was a conflict called. We voted that down. At what point are we now? Do we still have that motion before us? We still have to vote on that motion that was amended by Commissioner Shaw on the floor, is that correct?

Deputy Clerk Johnson responded yes. We have a main motion that was amended, and I think Commissioner Duffy had indicated he may want to amend this further, so I'll just note that first, but the amendment had passed as to the main motion that Section 3.1 referred to by Commissioner Shaw which includes the tasks for commissioners. The main motion on the floor goes back to what is appearing on your agenda that the current 1996 Charter Sections 3.11 and 3.12 serve as the language for the new Charter and add a new section relative to 3.1 as referred to in the motion—"Duties of commissioners. The first week of January, the commissioners of several departments must submit an annual report of their views on issues facing their respective department to the Board of Mayor and Aldermen. This report must include any dissenting views and is meant to convey the ideas and suggestions of all the commissioners."

Chairman Dykstra stated so we need to take a vote on that. Is there any further discussion on this before we vote?

Deputy Clerk Johnson noted unless you want to take a further amendment to that motion.

Commissioner Tessier asked we voted on that, didn't we.

Deputy Clerk Johnson replied no, not on the main motion.

Chairman Dykstra stated the main motion was the motion that Commissioner Pepino brought forth at the last meeting. Then, it was amended. We right now I believe, Carol correct me, we are voting on that main motion that Commissioner Pepino brought forth, as amended.

Deputy Clerk Johnson responded right.

Commissioner Hirschmann asked you said as amended.

Chairman Dykstra responded yes. It was amended by Commissioner Shaw to add a task.

Commissioner Shaw stated I'd like to make an inquiry. If I vote yes for Pepino's motion, if I place the two departments back as they were, is that what I'm doing?

Chairman Dykstra responded yes.

Commissioner Shaw stated if I vote no, those two departments are separate.

Chairman Dykstra stated if you're in favor of Commissioner Pepino's motion as it was first made, the Water Works and Airport Authority are basically going to be advisory. Okay, they were removed, but now they are basically advisory. They are back in as advisory. That was the motion. You amended that motion to give them a task. We have a motion on the floor to keep it as it was and your motion amending it to give them a task.

Commissioner Shaw stated if I vote yes, they're like the Fire Commission.

Chairman Dykstra stated they're going to be equal. That's what you wanted, Bob. You wanted them to all be equal.

Commissioner Shaw stated if I vote no...what if I vote no?

Chairman Dykstra stated then you're going to contradict yourself, because you basically voted in favor to basically put them back in, cause you want them to be treated equally. So the motion on the floor would be a yes vote if you do support that. I'm going to call for the vote.

Commissioner Cook stated I thought Commissioner Duffy wanted to make a further amendment, but maybe I was wrong.

Chairman Dykstra stated I told him he could make a further motion after this, and he said that's fine. We are in the voting mode now, okay, right now?

Commissioner Duffy stated excuse me, Madame Chair, that does not characterize what my statement was if I may say so.

Chairman Dykstra stated I thought you said that if you could make a motion that would be fine.

Commissioner Duffy stated I reserve the right to amend.

Chairman Dykstra interjected yes, you do. That's right. I have no problem with that. You said if you could make a motion later, that wouldn't be a problem. If you've changed your mind, then that's fine. I'm just repeating what was said.

Commissioner Duffy stated if it's in order, prior to having a vote on the motion by Commissioner Pepino, then certainly I would like to have an amendment to the motion. What has been passed, as I understand it, is the motion made by Commissioner Shaw as far as duties of commissioners. That has been approved by this Board.

Chairman Dykstra stated right.

Deputy Clerk Johnson stated that's part of the main motion on the floor now.

Chairman Dykstra stated the main motion has not been passed with it yet. You're amending it.

Commissioner Duffy stated I think, my sense is that this moves in the right direction, but it doesn't go far enough. I'm looking for more specificity. He's just looking in what has been approved is submit some sort of a report as far as issues facing their respective departments. It doesn't get to the issue about responsibilities. Roles and responsibilities is what we ought to be talking about, not just making out a report. The question is without some sort of specific instructions, boards and commissions are not going to be treated any differently

than they are today. In other words, the department head has no obligation to consider board and commission activities or interests or ideas or issues as included in this particular motion.

Commissioner Shaw stated I was presuming that at some point, not necessarily tonight, that you were going to make additional motions to increase the responsibility of commissions. Not necessarily tonight and that you had reserved the right to do that. That's what I thought.

Commissioner Duffy stated that's what I thought too until the Chair all of a sudden is trying to move forward with a motion that would negate that.

Commissioner Shaw stated no, you could make the motion any time you wish.

Chairman Dykstra stated no, no it would not. I thought I clarified that.

Commissioner Duffy stated as long as we understand that it doesn't negate an opportunity in the future...

Chairman Dykstra stated I thought I clarified it. We are moving on this motion. As I said before, you can make motions at any time.

Commissioner Shaw stated I hadn't finished though. In the prior Board meeting, the first meeting of this month, the Board took for the first time a power that we had given them to ask commissions to do tasks and to reassign tasks to them, and that's in the brand new Charter, and for the first time ever, for the Fire Commission, they asked them to do a task for the first time, and it passed.

Chairman Dykstra stated I saw that, yeah. Okay, if there's no further discussion, we're going to call for a vote on this...you want to clarify this for everyone Carol. I kind of think I know what we're doing.

Deputy Clerk Johnson stated the motion on the floor would be that the current 1996 Charter Sections 3.11 and 3.12 serve as the language for the new Charter, this would now include Water and Airport; as amended to include tasks as outlined in Commissioner Shaw's amendment.

Commissioners Cook, Hirschmann, Pepino, Shaw, Soucy, Tessier, Wihby, and Dykstra voted yea. Commissioner Duffy voted nay. The motion carried.

Commissioner Hirschmann asked could Commissioner Shaw's language be put in writing.

Chairman Dykstra responded I think that's what he's going to do.

Deputy Clerk Johnson noted I have it in writing.

Chairman Dykstra asked could you tell me what the vote was on that Carol.

Deputy Clerk Johnson responded eight to one.

Chairman Dykstra addressed Item 5 of the agenda:

Motion that all elected positions other than School Board be partisan  
(Tabled 2/5/03 pending legal research regarding whether if non-partisan  
elections were held, can the party affiliation, if any, for each candidate be  
noted on the ballot next to or below the candidates name.)

Commissioner Hirschmann moved to take the item off the table.

Commissioner Pepino duly seconded the motion.

Chairman Dykstra called for discussion.

Commissioner Cook asked are we going to vote on that.

Deputy Clerk Johnson stated could we take a vote on that, please.

Commissioner Shaw stated we have to vote to take it off the table.

Commissioner Hirschmann stated take the vote.

Chairman Dykstra responded all right, we'll take the vote. Call the roll.

Commissioner Cook stated before I vote, is the City Solicitor prepared to give us  
advice on that subject.

Deputy Clerk Johnson stated yes, he is.

Commissioner Cook stated okay, on that understanding, yes.

Commissioners Cook, Duffy, Hirschmann, Pepino, Shaw, Soucy, Tessier, Wihby,  
and Dykstra voted yea. The motion carried.

Chairman Dykstra stated so this motion is now on the floor.

Deputy Clerk Johnson stated the item is on the floor, and I believe the Solicitor is ready to report for you if you'd like to hear that. There is no motion yet though.

Deputy Solicitor Arnold stated I can make a report. I didn't know if you wanted to wait for a motion or not. I have researched the law such as it exists and am of the opinion that for municipal offices and municipal elections as distinguished from State offices and State elections, that by Charter, the voters could vote to have the party affiliation of any candidate designated on the ballot. As you may know, under State law, the City Clerk is responsible for preparing municipal ballots. However, the Secretary of State is responsible for preparing the State ballots and consequently with State elections, I don't feel you have that power, but with municipal elections, you do.

Commissioner Hirschmann moved that all elected positions are partisan other than the School Board.

Commissioner Pepino duly seconded the motion.

Commissioner Soucy stated a question for the Solicitor. If I understand correctly the item that you addressed, we would have a ballot that would list all of the candidates in no particular order, in alphabetical order.

Deputy Solicitor Arnold responded it would list in alphabetical order pursuant to statute.

Commissioner Soucy stated it would be listed in alphabetical order and whether or not a person had a party affiliation would be listed beside their name. So for example a Democrat might be a D, an independent might be an I, an R for a Republican.

Deputy Clerk Johnson stated an I or a U. Well, you'd have to define it as undeclared being an I, that's all.

Commissioner Soucy stated but it would be called non-partisan.

Deputy Solicitor Arnold responded yes.

Deputy Clerk Johnson stated not by what he's saying in this motion.

Commissioner Shaw asked is it my understanding that Commissioner Hirschmann has made a motion that elections be partisan which means Democrats on one part of the ballot, Republicans listed under...is that what you've done?

Chairman Dykstra responded that's correct. He's making a motion to make them all partisan other than the School Board.

Commissioner Shaw interjected even though the attorney said that you could put...

Chairman Dykstra stated right, yes.

Commissioner Shaw stated that's all I wanted to know. I mean, if you favor partisans, you should vote yes. If you favor non-partisans, you should vote no. Is that true?

Chairman Dykstra responded that's correct. Any further discussion? Okay, hearing none, could you please call the roll? A yes vote would be for partisan elections, for clarification.

Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra voted yea. Commissioners Cook, Duffy, Soucy, and Tessier voted nay. The motion carried.

Chairman Dykstra stated that has passed. There will be partisan elections.

Chairman Dykstra addressed Item 6 of the agenda:

Motion that the Airport Authority and the Water Commission members be elected positions.

(Tabled 2/5/03 pending legal research on whether statutory provisions would prohibit making such positions elective by the voters.)

Commissioner Hirschmann moved to remove the item from the table.

Commissioner Pepino duly seconded the motion.

A roll call vote was taken. Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra voted yea. Commissioners Cook, Duffy, Soucy, and Tessier voted nay. The motion carried.



Commissioner Hirschmann asked pending legal research, could we hear from the researcher or the legal opinion.

Deputy Solicitor Arnold stated certainly. At this point, I'm ready to report on the Airport Authority. Having researched the law, I don't believe that 49-C has any provision by where you can give a commission substantive as opposed to advisory powers. I'm not yet ready to report on the Water Commission. I've done some research on that but would like to do further before I make a report to the Commission.

Commissioner Soucy stated a point of clarification. I thought the issue on the floor was whether or not they were elected positions.

Deputy Solicitor Arnold responded yes. I don't believe that you can do that for the Airport Authority. The Water Commission there are State statutes involved that I would like to research further before I answer.

Commissioner Soucy stated further question. But you were speaking of advisory powers.

Deputy Solicitor Arnold stated that's correct. I think the two answers go together, that there is no provision in 49-B or C for this Commission to establish various commissions that have more than advisory powers. I don't believe that under the current status of State law that you could give them substantive powers for lack of a better term.

Commissioner Cook stated just a question, two questions actually. It was my understanding on this motion last week that it came and it was Commissioner Hirschmann's motion so he would know the motivation for it, but it was my understanding that after Water Works and Airport were proposed to be deleted from the list with the presumption that they were going to be given some substantive authority that he made a motion to, if that was going to be the case, then they should be elected. My understanding of what we did previously tonight was to delete that pre-existing premise because they have now been lumped back in with all the other commissions, whether we like it or don't like it. So my question is whether we need to proceed with the debate or whether anybody wants to proceed with the debate. I guess we'll find that out from who makes what motions. But the other...I want Mr. Arnold one more time...what is the connection between whether they're electable and substantive and non-substantive because I missed it. You said it. I know you said it. I heard you say it, but I missed the back-up behind it.

Deputy Solicitor Arnold stated I just did not find any authorization in the law to either elect or give them substantive powers.

Commissioner Cook stated I thought the question was only can they be elected. I didn't think the question had anything to do with giving them substantive powers.

Deputy Solicitor Arnold stated that was the original question, yes.

Commissioner Cook asked was that the original question.

Deputy Solicitor Arnold stated yes, I believe so.

Commissioner Cook stated okay, thank you.

Commissioner Duffy stated I find it totally inconsistent this Board having just voted to remove or put these two entities back into the collective group so that it's one size fits all in other words and then now to suggest that the members of those two respective boards be elected. Elected for what purpose is my question. Elected to be ignored? That's basically what you're asking. I find this thing preposterous, absolutely preposterous that anyone could suggest that you're going to have elected officials and give them no role and no responsibilities. Think about it. I mean that just shows how jaded some views are in terms of these matters. Again, I'm looking for some consistency in which we're going to deal with these issues.

Chairman Dykstra stated Commissioner, this was tabled, and now it's up for discussion. That's what it's all about. Discussion.

Commissioner Shaw stated I'm one of those that, if those two commissioners were to be given powers which I think we haven't given them all the powers they had in the past, I did favor their being elected, but having moved them from B to A, I say that we should vote...I think we're trying to clear up the calendar, Commissioner Duffy. I think that's what we're trying to do, as quickly as possible vote this down. I hope all the other Commissioners will do that, vote this down.

Commissioner Hirschmann stated I move to the question.

Chairman Dykstra stated okay, you're making a motion.

Commissioner Hirschmann stated it's on the table for a vote.

Chairman Dykstra stated it's been taken off the table. We're discussing it now. I believe, Carol, he has to make a motion whether he wants them elected or not. Is that it or how would that go?

Deputy Clerk Johnson stated the motion is on the floor.

Chairman Dykstra stated all right, the motion that the Airport Authority and Water Commission members be elected positions.

A roll call vote was taken. Commissioners Cook, Duffy, Hirschmann, Pepino, Shaw, Soucy, Tessier, Wihby, and Dykstra voted nay. The motion failed.

Chairman Dykstra addressed Item 7 of the agenda:

Chairman Dykstra advises that the Commission will proceed to review the listing of "Items Flagged for Discussion" previously established by the Commission in numerical order, unless otherwise directed by the Chair or approved in a different order by a two-thirds majority of the members present.

Chairman Dykstra stated other business okay, and we did get a copy of some information submitted by Commissioner Shaw, but we will continue and see what comes out of this.

Commissioner Shaw stated, Madame Chairman, I'd like to make a motion. Under Item 7, you have listed down that we should go down that list where we flagged for discussions, and it looks to me like we need six votes in order to move from question number one to question number two, number three, and you know that's not a...never was voted by us that that should be the condition.

Chairman Dykstra interjected that's correct.

Commissioner Shaw stated so I'm making a motion that the item seven be tabled and that as we wish, let's take any one of those numbers from one through whatever they are off the table and discuss them.

Deputy Clerk Johnson stated they're not tabled.

Commissioner Shaw stated so we can move around the issue, that's my point.

Chairman Dykstra stated right, that's fine. You have a right to your point. Now, we didn't get a second yet, but we wanted a clarification. We're not going to discuss the tabling, but just a clarification, I think I mentioned this to you before. It was put in there, but the thing is it says directed by the Chair or approved in a different order. I did not put in the two-thirds, so I would have always supported what we have is a majority, and I think I mentioned that to you previous to this meeting, Commissioner. So you have a motion to table. As you know, a table and second is going to be no discussion. Are you tabling this to a time indefinite, or is it going to be tabled to next week, all of these things, or what is your intent here?

Commissioner Shaw responded table it to 5:53 today, so then you would move each item off of the table as you so wished, you see. My point, Commissioner, is that I think that in order to function correctly, people should make motions as to what they wish to discuss, so if I were to discuss item number 17 on your list there that you gave us, I would make a motion to hear item number 17.

Chairman Dykstra interjected due respect, due respect, Commissioner, this is a list that all nine of us supported as things for discussion. I just put it in there, and as you see here, it's listed that you can remove them. You can do anything you want with them, but I thought I'd try to bring a little order to this Commission. Evidently, I've failed.

Commissioner Shaw stated no, no. You brought order, but I don't like order.

Chairman Dykstra stated right now, there's a motion on the floor, and my watch is fast. So you have a motion on the floor to table item seven, for three minutes, is that it?

Commissioner Shaw responded no, to table the item...Madame Chairman, I want to table the item. You asked when somebody could bring the item back. I never want to bring item seven back. I want to bring back parts of item seven as I was...or anybody wishes to discuss them.

Chairman Dykstra stated well, then you're going to have to table it to a time...Carol, can you jump in here?

Commissioner Shaw stated you don't have to table it to a time certain.

Chairman Dykstra stated well then, won't it be tabled to next week? Carol, if you can clarify it, I'd appreciate it.

Deputy Clerk Johnson stated I think what he's trying to do is to table the entire items flagged for discussion and then remove individual items by removing items from the table, so in essence, the whole document would be tabled.

Chairman Dykstra stated okay, so he doesn't have to table it to a time definite. Is that correct? I'm just asking clarification of the clerk?

Deputy Clerk Johnson stated I don't have a recorded second to the motion, and maybe there was one.

Chairman Dykstra stated there was a second, wasn't there. I thought there was. I thought Commissioner Cook seconded it. He did.

Commissioner Cook stated I'll second it for discussion. I'm not sure if I'm going to vote for it.

Chairman Dykstra interjected we can't discuss a tabling. That's why I wanted a clarification.

Commissioner Cook stated I want a point of parliamentary inquiry to the clerk.

Commissioner Hirschmann stated that's not a second.

Commissioner Cook stated I seconded it, but I'm trying to figure out if this is the right way to do what I think, I hope I know what Commissioner Shaw is trying to do. I think he objects to the fact that the agenda item said we were going to take items in order as they are on the list—one, two, three, four, five, six, seven, eight, nine, ten—because I think he said some of them are more important, some of them are less important. He wanted to do the important ones first, and my question to the clerk is without tabling an agenda item which is being objected to for the form of the way it's written which is something new to me, couldn't we rather take a vote to say that item will be administered by this Commission to allow all the items to be taken up but in the order that they are brought up by members of the Commission?

Deputy Clerk Johnson stated item number seven was put together by the clerk's office, and the reason we put it together that way was because the Chairman wanted to bring some semblance of order to discussion. What we said to her was you have items that the Commission has voted on. I would like to clarify why it's written this way. We put the items on so that you could move forward in some sort of a progressive manner, and it was felt that the Chairman could say, "Okay, we're going to start with item one," and if Commissioner Hirschmann said, "Well, could we start with item four, cause that's more important?"...she could say yes or

no, and if she says no because she wants to proceed with it in that order, as per the rules of the Board and this Committee, that could be over-ruled. The Chairman did not indicate...the idea was to go back to the items that you listed in the first place and whether you take that by item four first and item one second was not the issue. It was a matter of having this attached and try and keep it in some semblance because frankly when we try to write up what you're doing, it's going to be a mess unless we have some kind of order to what we're doing. We've got pieces of sections hanging out there, and you're not going to understand where you're at, and you're going to miss things that you don't want to miss is our fear. So what order you take them in...you don't need to table item seven, you can proceed right to your items flagged for discussion. As a Chairman, you can do that and ask which item you want to take up first and get a vote of the committee to do that if you want. That's fine. That's procedural.

Commissioner Shaw stated first of all, I don't find it within the purview of the Chairman to decide that any particular meeting is chaos, for what is chaos to one member or all members might not be chaos for somebody else. You know, I mean you can come before as a group and go down a path which I said the right path to go down for this Committee was for people to make a motion, to hopefully have a second, and then discuss that issue. Now, if there's 40 items on this new agenda that is here individually, the method that I favor, which doesn't favor me in all cases because other people have a right to make motions on any item that is there and the clerk can easily keep track of the 40 items that have been discussed.

Commissioner Hirschmann interjected point of order. He's discussing a tabling motion. You can't do it.

Commissioner Shaw stated my point is, Alderman, that I don't think it is fair to pass on our powers as to what's to be discussed. That's my point.

Chairman Dykstra stated Commissioner, before I go any further, just to correct you, I don't think I used the word chaos, but that's quite all right. Are you going to keep this tabling motion on the floor? And you're going to keep your second? We're going to move on this question. We're not going to discuss it.

Commissioner Shaw stated I think that Mr. Cook paraphrased, and he does that so eloquently, my intent. Somehow he can read within the lines of what I said. Now, if he could repeat what he said is really truly was my intent.

Chairman Dykstra stated Commissioner Shaw, you made that motion to table. Commissioner Cook seconded it. You still going to keep your second on the floor, Commissioner Cook? If you are, we're going to call for a vote. It's a tabling. I'm not giving any more...

Commissioner Cook stated I will withdraw the second because my understanding of the clarification of my question from the clerk was that you have the power to administer this Commission the way that former Mayor Shaw wants it done, and that was the intent of his motion, so I don't think it's necessary to table the item.

Chairman Dykstra stated do I have a second to Commissioner Shaw's motion. Do I have a second?

Commissioner Shaw stated well, there is no second, because I withdraw my motion.

Chairman Dykstra stated you withdraw your motion, so right now, we're going to get to work to do a few other things here. Now, if there is anything that this Commission wants to discuss...

Commissioner Cook moved that we take up item ten, Department of Welfare. Should Commissioner remain elected or be appointed?

Commissioner Shaw seconded the motion.

Chairman Dykstra stated actually I don't know if we need seconds because if any Commissioner here wants to take up something, I'm just going to allow it. I think that would be the courteous thing to do.

Commissioner Cook stated I'd like to take up item ten, cause I think it's a defined and identifiable issue.

Chairman Dykstra stated right now, the Department of Welfare item ten is up for discussion, whatever you want, that's what we're discussing.

Commissioner Cook moved that the Welfare Department and Commissioner be made consistent with other departments of the City and that its Commissioner be appointed as other commissioners are appointed.

Commissioner Hirschmann seconded the motion.

Commissioner Cook stated I'd like to address it. We heard very good testimony I thought from a very thoughtful member of the Welfare Department on the need to keep the welfare function free from political influence, and we have a non-interference provision that's mandated by 49-C in the Charter which would make such interference illegal. One of the great incongruities of the Charter and we recognized it in the last Charter Commission and I think the prior Charter

Commission probably recognized it too was this election of the Welfare Commissioner situation in Manchester where independence is important. Ability to administer welfare according to the law is important. I think there are sufficient legal protections so that that inconsistency probably is unnecessary and very frankly my opinion is we would probably, not guaranteed, but we would probably get over time a more professional and more supervised Welfare Department if in fact it was part of the City administration.

Commissioner Shaw stated I favor Commissioner Cook's motion, but I am concerned that I think injustice that somehow we add terminology that says that the current Welfare Commissioner would continue in his position until such time as the Board of Mayor and Aldermen under procedures would remove him from that task. In other words, we have already an elected Welfare Commissioner, and I don't think the job should go out for bid or for a new person, that's my point.

Chairman Dykstra asked wouldn't he finish his term though. I would think...what is your...

Commissioner Shaw stated I don't think he has quite stated, you know, in other words added to his motion. He hasn't added the thought that the incumbent shall keep his position until such time...

Commissioner Cook stated the way, as I understand the drafting process as opposed to the policy-making process, is when whatever group gets to take whatever it is we've decided and make a written document out of this, one of the provisions that's in any Charter are the transition rules on...last time you'll recall, Madame Chair, that we had existing department heads who had terms, and their terms varied because of when they were appointed, and we had a provision that said how those terms would roll out to the no term situation that was put in the Charter, and that worked fine. Certainly in my motion, I do not mean in any way to make a comment on the current Welfare Commissioner or anybody else. I think the current Welfare Commissioner from all accounts is doing a magnificent job. I'd suspect he'd get appointed by the Mayor, but the concept in my motion is not how the transition would go. I view that as a separate issue. This is merely to get the sense of this Commission on whether we want it to cease being an elected position and be a department. We can then deal with the transition of the present incumbent I would assume in a different item.

Commissioner Duffy stated I believe Commissioner Cook was finally getting around to what I was proposing that we ought to deal with these things as separate issues. We ought to deal with the question about the Welfare head being elected or appointed and then on a separate issue provide some guidance to the Board of Mayor and Aldermen relative to the incumbent, and I think we can do that in such



a way as not to confuse what's in the Charter versus what actions we think are appropriate as far as the incumbent.

Commissioner Tessier stated my question is for Commissioner Cook.  
Appointment. Did you have a number of years on that appointment or was it...

Commissioner Cook stated my motion is to make it consistent with other department heads, and there is a procedure in the current Charter that says in essence a department head serves at the pleasure of the Mayor who can get a certain number of votes to satisfy his recommendation that someone be removed, but that is not for a term.

Commissioner Hirschmann stated as I was doing my reading this weekend, I did read the state statute that described how to go about converting an elected welfare person to a department head status, and it named it "public assistance administrator" or "general assistance administrator", so the new department head would report to the Mayor as a department head and be the Public Assistance Administrator.

Chairman Dykstra asked if anybody needed a clarification of this motion.

Commissioner Pepino responded yes, I do.

Deputy Clerk Johnson stated the motion is to make the Welfare Commissioner consistent with other department heads and make it an appointed position. It will probably be referred to as the General Assistance Administrator.

Chairman Dykstra called for a vote. Commissioners Cook, Duffy, Hirschmann, Pepino, Shaw, Wihby, and Dykstra voted yea. Commissioners Soucy and Tessier voted nay. The motion carried.

Commissioner Duffy stated Commissioner Hirschmann I thought brought a valuable point in his last comments about what this title or what this officer or what this department head is called. If I'm not mistaken, I think there's value in perhaps considering that as part of this change that would come about in this Charter. Would you mind repeating that just for clarification?

Commissioner Hirschmann stated the RSA stated that it was the "General Assistance Administrator". That was the term that they used.

Chairman Dykstra stated that motion has passed. Is there anything else that anybody wants to take off. We're just kind of...you've got them out there. You can certainly pick one off and discuss it.

Commissioner Hirschmann stated I'd like to discuss item 2C. 2B is done. Item 2C. I would move that we stay with two-year terms for all elected officials. It gives the voters a chance every two years to go and state their wishes in the ballot box.

Commissioner Pepino seconded the motion.

Commissioner Soucy stated I really would hope that we would maybe take a little more time to discuss this motion because I think that there is a great deal of value in looking at four-year terms for citywide elected officials, that being the Mayor, currently the Aldermen at Large—if they're removed that wouldn't apply to them, but there really is something to be said for the fact that people spend a lot of time raising money, campaigning, running elections. On a ward level, that's not as much of a problem, but on a citywide level, it has become very expensive, very time consuming, and if you look at recent history in the City of Manchester, almost every Mayor that runs for a second term is re-elected because it takes that long for someone who wants to make change in this City or who wants to administer the City to do so effectively. It takes more than two years, and I firmly believe that at least for the office of Mayor, we should look at expanding the term.

Commissioner Shaw stated the rationale for two years for me is that if I was to go for four years, then I would want a recall allowability which other communities have, and I find that the recall part of any life of an elected official is turmoil for the community, turmoil. Nashua has gone through that two or three times. I do not favor longer than two-year terms.

Commissioner Duffy stated I would make a distinction between this item which is really dealing with the Board of Aldermen. It doesn't mention the Mayor as you know in this particular item, but I would concur with Commissioner Soucy with respect to the term for the Mayor. It isn't brought out in one of these items as listed before us, but I do think that that's a legitimate question that needs to be discussed by this body, and that is the term of office for the Mayor, and I would separate that from the term of office for Aldermen.

Commissioner Hirschmann stated I made it for all.

Chairman Dykstra stated I'm sorry. What was your motion then?

Commissioner Hirschmann stated my motion was for all elected officials to have two-year terms, and my point on the matter is if you went to four-year terms, say you did, you would only allow a voter to go to the polls twice in a decade. Think

about it. We get to go every two years. You get to go five times in a decade. You don't want someone only being able to vote twice in a decade for their leaders.

Commissioner Soucy stated a point of order. Could I just ask Commissioner Hirschmann to clarify? You did mean all of the Aldermen, School Board members, and Mayor as part of your motion. Even though this item specifically says Aldermen, you meant all of them.

Commissioner Hirschmann responded yes. When I made my motion, I said all elected officials.

Commissioner Pepino stated you know, we hear this every year in Concord about the Governor. He should have four years. Your Congressmen have two years. Governor has two years. Councilors have two years. State Senators have two years. House of Representatives have two years. Everybody has two years, but yet they say Governor should have four years because he's got to start campaigning. Now, who campaigns any more than the Congressmen? They have two years.

Chairman Dykstra stated and I just wanted to mention, I do agree with Commissioner Shaw that we don't have a recall petition. If you have a person, no matter how much money he spends, if he makes promises and he breaks them through his service to the people and does things that don't please the citizens, then they have that opportunity to go back to the polls, and we've talked often about no recall petition. You always go to the ballot box, and I think we give the citizens an opportunity to go back every two years, so I do support that, and if there's no further discussion, I'm going to call for a vote. Roll call.

Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra voted yea. Commissioners Cook, Duffy, Soucy, and Tessier voted nay. The motion carried.

Commissioner Shaw stated item two is done.

Chairman Dykstra concurred that two is done. Evidently the number of Aldermen we've done. We've done all those last time, and we're basically past this.

Deputy Clerk Johnson stated I just want to make sure that are we...there was talk about staggering terms at one point for Aldermen.

Chairman Dykstra responded no. Evidently this motion has passed for the two years. You do have in here in item two, Carol, about keeping the At Large Aldermen. That was already voted on.

Deputy Clerk Johnson stated this was just the items that were originally flagged. We didn't knock anything off of it.

Chairman Dykstra stated so basically dealing with the Aldermen basically is pretty well done in that area. Anything someone else wants to take off, any Commissioner wanted to take off of this or if there's something else you wanted to discuss that's not on here?

Commissioner Hirschmann stated item six, Your Honor.

Chairman Dykstra interjected that item six has to do with public comment.

Commissioner Hirschmann stated I want to make a motion that public comment remain, and the public are allowed to give public testimony at Aldermanic committee meetings.

Commissioner Cook seconded the motion.

Commissioner Shaw stated I would like to make a new motion, an amendment to his motion.

Chairman Dykstra stated certainly.

Commissioner Shaw stated my motion will be what I gave to the people tonight, item number ten, and I move to substitute all of this for Commissioner Hirschmann's motion.

Chairman Dykstra asked can the Clerk read that for everyone, the motion by Commissioner Shaw. Unless you want to read it. Do you want to read it, Commissioner Shaw?

Commissioner Shaw stated any citizens of Manchester, having failed to have a grievance addressed by a City Department, a Board, Commission, the Mayor or Alderman from his ward shall on a written request appeal to the Board of Mayor and Aldermen for the right to be heard by the full Board. The Board must not only grant such a request to be heard but must render a decision not more than 30 days after such hearing. This requirement would apply also to the School Board.

Commissioner Pepino duly seconded the motion.

Commissioner Shaw stated anybody that has viewed the Aldermanic Board meetings and watched the citizens come forward for their two minutes can understand that none of their concerns are addressed. The thing is received and

filed, okay, so nothing is accomplished by allowing somebody this 30 minutes of time at this podium over here, so my motion gives the citizens a very public forum to be heard, requires the Aldermen to hear them, requires them to address the concern of the person that has addressed them. The fact that people can come forward and just bring up health care—every single time they come, they bring up health care—okay, the Aldermen have the right to hold public hearings whenever they wish on any subject they wish. They're not restricted to that. This thing for the 30 minutes, and it happens at the School Board. The same people come forward with the same thing, and nobody ever addressed their concern. My motion solves a problem, gives the public access to the Aldermen, okay, and demands a response. Now, how much more could a citizen want from his government, to be heard and to have an address of his grievance. It doesn't mean he's going to win the argument, but he does have a requirement that he be heard and that he have a decision, and therefore I have substituted, and we had a second to my motion.

Commissioner Cook stated we're not necessarily talking about the same subjects when we talk about public comment which the present Charter requires both for the Board of Mayor and Aldermen, the School Board, and the various commission meetings, and I think has been observed fairly well. There are a lot of times when the public comment, yes, do the same old, same old show up and say the same old, same old stuff. Yes, but it's a free country. There is also a lot of information that is not necessarily action items that's brought forth and allowed to be made known in the community by people who come and say such and such is going on in such and such a place. Such and such a thing is going on in this ward, such and such is going on with this activity or this organization. The last Charter Commission believed and I think appropriately, notwithstanding some of the stuff we get to watch on television, that the citizens' right to participate in and be heard and influence their government in a structured way was important. What I think Commissioner Shaw is referring to is a mechanism basically of appeal when someone has not been successful in trying to redress a complaint in the government, and I think that's a slightly different thing, but I would be reluctant to restrict, which I think his amendment does, restrict the free access of people and the subjects that could be discussed in public comment. I just don't think that's a good idea.

Commissioner Hirschmann stated the amendment seems restrictive because you have to file what's called a grievance. What I always found, it's a great public service to have someone be able to come in and address the full Board, saying their car got towed the night before. In the old days, the citizens had to wait six months for a public hearing. Now they can come before their body fresh every month and give testimony. It's a great service to the citizens, and it only takes up

a half an hour of the Aldermen and Mayor's time, and I would suggest that we keep the service. The amendment seems restrictive, Bob.

Commissioner Shaw stated so I could speak again on this particular issue. First, maybe we should put to your amendment that Aldermen can't chew gum. They can't turn and talk to their friends and not listening to the people that are making suggestions. I think that what we're forgotten here is that what the body that should hear the citizens is, the body that hears this public comment is a Legislature, and seldom if ever, I don't even know where, people appear before Legislatures. They surely don't appear before Congress. They don't appear before the State Legislature, the State Senate. They appear at committees where their grievances, if they wish to have public comments on what the Aldermen or such are doing...so I mean it is wrong not to look at how it works at the present time, not to correct the problem, not to deny citizens because I think they should be able to speak at committee meetings, and they should, the Aldermen, if they so wish public input should do it, but we shouldn't demand that they do something that they do poorly, very poorly. And if you could find a citizen in Manchester that's been sent even one correspondence from the Aldermen on subjects that they discussed that night, I'd appreciate a copy of it. So, you can call my motion. It's been made and seconded, but if it fails, it fails. I could care...

Chairman Dykstra stated I just wanted to touch on this briefly. I agree with Commissioner Hirschmann because many times, who's going to write letters. People don't even send letters and cards to each other, to go out and to file a grievance. Sometimes something happens in City government the night before, and a citizen may want to address it the next day, necessarily not a grievance but just to get some input. It kind of keeps the Aldermen's feet to the fire, and I think it's important they have that. What Commissioner Hirschmann is doing is not only giving them that opportunity to speak any time they wish within a matter of moments but also to testify or to speak at committee hearings, at committee meetings. I think that's also important. Right now, I've got many calls saying, "Gee, is there anything you can do in that Charter to give me more than two minutes because it's really not an awful lot of time to speak," and someone made the fact that 15 minutes, sometimes the public comment is only 15 minutes, and the Aldermen wait around another 15 minutes, so I just wanted to make that comment that I do agree. There was a motion, a second. There was a discussion, and I'm going to call for a vote at this time.

Deputy Clerk Johnson stated the vote would be on the amendment.

Chairman Dykstra responded yes, we're on that amendment.

A roll call vote was taken. Commissioners Pepino and Shaw voted yea. Commissioners Cook, Duffy, Hirschmann, Soucy, Tessier, Wihby, and Dykstra voted nay. The motion failed.

Deputy Clerk Johnson stated the main motion would be to put in the 2.06 language but add to that committees.

Chairman Dykstra called for a roll call vote. Commissioners Cook, Duffy, Hirschmann, Pepino, Soucy, Tessier, Wihby, and Dykstra voted yea. Commissioner Shaw voted nay. The motion carried.

Commissioner Duffy stated to stay on the same track, may I suggest we go to item 37, and I move that we continue this item, Section 8.14 in the Charter. That's public comments for boards and commissions.

Commissioner Hirschmann stated we just did that.

Commissioner Cook explained no, I think we only did the Board of Mayor Aldermen.

Chairman Dykstra stated how did you want to address that.

Commissioner Duffy stated I made the motion to continue that.

Chairman Dykstra stated to amend it to boards and commissions.

Commissioner Duffy stated yes.

Commissioner Hirschmann duly seconded the motion.

Commissioner Shaw asked would that include lands and buildings, a committee of the Aldermen. Is public comment allowed? Is it allowed now? Will it be allowed in the future if we approve this?

Chairman Dykstra stated he's saying all boards and commissions.

Commissioner Shaw asked are you sure of that.

Chairman Dykstra responded if he wants to clarify it, he's making that motion.

Commissioner Shaw stated I want to know...does somebody know if citizens have a right to be heard at the lands and buildings committee when they meet. Is there a procedure?

Commissioner Duffy stated the language here is pretty explicit.

Commissioner Cook stated this provision is for boards and commissions. It is not for committees of the Aldermanic Board.

Deputy Clerk Johnson stated committees of the Aldermanic Board were just added in the last motion. So it is not now but it will be according to what has already been acted on by this Commission.

Commissioner Shaw stated by Hirschmann's motion, that committees will have to have public input.

Deputy Clerk Johnson stated as well.

Commissioner Hirschmann stated that passed.

Deputy Clerk Johnson stated right now we have Commissioner Duffy by Commissioner Hirschmann for item 37. To add in Section 8.14 in the new Charter. Is that what you wish to do?

Chairman Dykstra called for a roll call vote. Commissioners Cook, Duffy, Hirschmann, Pepino, Shaw, Soucy, Tessier, Wihby, and Dykstra voted yea. The motion carried.

Commissioner Soucy stated item 17, I would like to move that we adopt the language of the current Charter but only applicable to the Mayor, based on our previous vote to make the Welfare Commissioner an appointed official.

Deputy Clerk Johnson stated that's consistent with State law.

Commissioner Cook stated one year is what the State law requires.

Chairman Dykstra asked so what is this going to be doing now? Could you clarify?

Commissioner Soucy stated the present Charter requires that the Mayor be a resident of the City for at least one year prior to taking office, and I would like to continue that practice for the Mayor.

Commissioner Duffy duly seconded the motion.

Commissioner Hirschmann asked is three years prohibited.



Commissioner Cook responded yes.

Chairman Dykstra called for a roll call vote. Commissioners Cook, Duffy, Hirschmann, Shaw, Soucy, Tessier, Wihby and Dykstra voted yea. Commissioner Pepino voted nay. The motion carried.

Commissioner Cook stated if I could ask a question. Some place on this list of issues on the residency requirement for somebody, there's an item that says State law presently under revision, on domicile. I probably knew what that meant when the thing was done, but I've read it a couple of times, and I cannot recall what the basis for that was. Is there a bill in the Legislature, or is there some court case, or what's going in that? I just wanted some clarification, cause it might affect when we take it up.

Deputy Clerk Johnson stated the domicile issue was in relation to election laws, and I know we had made a reference to that because there is language being submitted under a few various different bills, but particularly as a result of a study committee that had occurred, and I know that the Attorney General's office actually has been part of that. That was our only notation that we were making at the time, that we would have to go through this to determine where.

Commissioner Cook responded thank you.

Commissioner Hirschmann stated could we move to item 35 which is Charter enforcement, and I wanted to bring forward a motion for State RSA 49-C which is violations, to have that stipulated in the Charter, and State RSA 32:12 which is penalties. I'd make the motion but I'd need an opinion, if both of these can be in the Charter and be consistent or if it's an either/or.

Chairman Dykstra stated I think you all have a copy of that. That was the one Kevin Clougherty brought forth at the last meeting, the penalties.

Commissioner Hirschmann stated I apologize for not getting that clarification ahead of time. I was under the impression that we could act on both.

Commissioner Cook stated I have a question while the Solicitor is looking at that. My understanding of 32:12 is a provision that doesn't have to be in the Charter. It's a right that citizens have. If somebody's violating the rules, they have a right to go to the Superior Court, and it doesn't have to be included in the Charter. They have that right to address the Superior Court with their question. That's a general right that we can't take away by not including. That's a right that people have statutorily, I think.

Chairman Dykstra stated right. Of course, everyone knows they can go to court at any time, but I haven't got a copy of it. Doesn't this go a little further than basically specifying what can be done as compared to just going to Superior Court and issuing a complaint?

Commissioner Cook stated I'm not objecting to putting the 49-C in the Charter, Madame Chair, I'm not objecting to that. I'm just saying I don't think it's necessary to put 32:12 in the Charter for citizens of Manchester to use it if somebody's violating the Charter. That's my only point.

Commissioner Hirschmann stated if the Solicitor agreed with you, I would just move on the violation aspect.

Deputy Clerk Johnson stated the Solicitor is reviewing 32:12 and 49-C:31 which are the two references that were made. 32:12 is actually part of Municipal Budget Law, so it would not refer throughout the Charter unless you were going to put in that provision is what he's tending to think at this point. So I guess the motion would be in order if you want it to apply to the entire Charter provisions.

Chairman Dykstra stated we have a ruling that that motion is appropriate. Did we have a second for that?

Commissioner Wihby duly seconded the motion.

Commissioner Shaw asked under the penalty, what is this subdivision. What does that mean? Anyone who violated the provisions of this subdivision. Subdivision of what?

Commissioner Cook stated of the statute.

Commissioner Shaw asked of the statute. Doesn't that apply to State law? Aren't all of our things either Charter or ordinance rather than subdivisions? I don't know. I don't like it personally.

Deputy Clerk Johnson stated if we're understanding what Commissioner Hirschmann is trying to do is he would be looking to apply this penalty provision within the new Charter that you're doing as applying to the entire Charter, not to any subdivision, so subdivision the verbiage would be changed to read Charter. So it would be "of this Charter".

Commissioner Shaw asked isn't the way State law works that there are laws and anybody who violates a State law, you know that's required the Governor and

such, isn't that a State law versus us. Do you know that the Superior Court would be required to hear us speedily where we're a city versus some other type of...do you know that to be a fact, and who would make the petition? Who would decide what type of petition would have to go before the Superior Court to be acted on speedily? Who are you allowing to say it's a violation of x, y, or z? I don't understand the thing.

Commissioner Hirschmann stated this is enabling, to enable the citizens of Manchester to make sure their governing body follows the Charter, so there's a provision for penalty and a provision for violations.

Commissioner Shaw stated but isn't Mr. Cook's point they already have that right.

Commissioner Hirschmann responded no.

Chairman Dykstra stated it's just the right to go to Superior Court.

Commissioner Shaw stated that was his question, that they already have this right under State law. Anybody that thinks x, y, or z can go to court maybe, and we all know we can go to court, but the question is this. Who in Manchester? Would an Alderman say the Mayor therefore has not conformed to the Charter, and therefore go to court, requiring Superior Court to decide to push aside all cases including murder and decide speedily if the Alderman was correct or not? And you only need one Alderman to do that? There's something missing here, and I don't even know what it is.

Chairman Dykstra stated well, that's why we're here to discuss it, Commissioner. The City Solicitor has the floor just to discuss this, so we can continue. He wanted to say something.

Deputy Solicitor Arnold stated I am looking at this section and cognizant of the intent. However, I don't think that this Board or the City in a Charter can impose conditions or give jurisdiction to Superior Court. I don't think that this Board could provide, or actually say if you recommended a Charter, the Charter could provide that that action could take precedent over other Superior Court actions or that it has to be decided speedily. Only the State Legislatures that did here can do that. I think that probably, without having a chance to research it I'm always hesitant to open my mouth, but I think that if you looked at 49-C and wanted to add a provision that said that, you know, in addition to that penalty that an official who violates the Charter may be subject to removal from office, you probably could do it. Again, I qualify that caveat by saying that I'd like some opportunity to research it before I gave a definitive opinion on that.

Commissioner Shaw stated I think the punishment is quite severe. We already discussed two-year terms for the Mayor, and we decided, one of the reasons I decided was that we didn't have a petition to recall. I'm not sure that I want to give somebody else the power to remove somebody from office that's elected. I think that that person just has a right to their opinion.

Commissioner Hirschmann stated well, just as Commissioner Cook stated, that is a provision that is apparently out there that anyone can go to Superior Court at any time, so I'll clean up my motion and move that the violation provision be enacted because there is no conflict with the violation provision, so I'm going to move 49-C:31 at this time and ask for a second on that.

Commissioner Cook duly seconded the motion.

Chairman Dykstra called for a roll call vote. Commissioners Cook, Duffy, Hirschmann, Pepino, Shaw, Soucy, Tessier, Wihby, and Dykstra voted yea. The motion carried.

Commissioner Duffy stated in an effort to keep making progress, I suggest that we move to item number 36 which is 8.13 in the new Charter. As a veteran, I was pleased to see that this was incorporated into the last Charter, and I commend the Charter Commission for having done so, and I move that we incorporate that into the new Charter.

Commissioner Soucy duly seconded the motion.

Commissioner Shaw moved the question by voice vote only to save time.

Chairman Dykstra stated on this one, certainly we can do that. You must have a good feeling about it.

Chairman Dykstra called for the vote. There being none opposed, the motion carried.

Chairman Dykstra stated veterans' recognition remains in the Charter. Commissioner Pepino has brought up a point that is not in here, I don't believe. That was what was brought in from a clerk's office which had to do with increase in salary for the Mayor and increase for the Aldermen. It's not here. I told you anyone could bring forth whatever they wanted. Oh, it is on 28, compensation, okay. That's just the Mayor's.

Deputy Clerk Johnson explained this is where it would come in or not come in because it's compensation of officials, so if you're going to designate anything for any officials, which would include your Aldermen, you can put them there.

Chairman Dykstra stated evidently in this past Charter, right Brad, we just had the Mayor's salary. We did not address the Aldermen's.

Commissioner Cook responded that's correct. We addressed, I believe and I'm doing this from memory, but we addressed the other salaries saying that they would be set by a Board other than the Board that was going to be paid. In other words, they had to be set prior to the term of the Aldermen for which the pay applied, but we didn't set a number.

Commissioner Shaw asked did he make a motion that the 68 be...the amount...I'm not sure because I want to make an amendment to his motion.

Chairman Dykstra stated let me clarify. I think I've jumped ahead here which is hard to believe. Commissioner Pepino, you had the floor first. You wanted to discuss this. Are you ready for a motion or do you just want to kind of discuss this before a motion comes up?

Commissioner Pepino stated where the Alderman's pay was, that's what we're talking about.

Chairman Dykstra stated we do have that on a sheet of paper that was given to us. I don't have it at this time. He's the one who brought up this item, so I want to give him the opportunity to make a motion or to basically...

Commissioner Pepino stated I'd like to bring up the Aldermen's pay raise.

Chairman Dykstra stated okay, so you just want to discuss it. Is that it? Okay then, fine.

Commissioner Pepino responded...and vote on it.

Chairman Dykstra stated well, you'll have to make a motion to vote, but we can discuss. That's not a problem.

Commissioner Shaw stated I'd like to make a motion on the Aldermen's salary if anybody's willing. My motion is this, that the salary for Aldermen and School Board members shall be set eight percent of the Mayor's salary starting in the year 2006, the current salary to remain in effect till December 31, 2005. You understand that eight percent, there are 12 Aldermen. Eight percent times 12

comes fairly close to 100 percent which means that each Alderman is one-twelfth of the Mayor in his salary position. It doesn't take effect for the current Aldermen or for the next election. It takes effect...

Chairman Dykstra interjected okay right, but you're giving in the future a raise, not knowing what the economics are going to be.

Commissioner Shaw stated well, I find that people don't want to spend more money at this time.

Chairman Dykstra asked do we have an amount here so we know what we're talking about. What would the total...

Commissioner Shaw stated in 2006, the Mayor's salary would be in the range of \$80,000 based on the Governor's salary.

Chairman Dykstra stated that's in three years, around \$80,000, is that what you're saying.

Commissioner Shaw responded at the present salary though, the Mayor's salary is technically for mathematical purposes, I like to say \$70,000, close enough for government work, and eight percent of \$70,000 gives each Alderman and each School Board member \$5600. That will not be the Mayor's salary if we pass a more progressive method of paying. But I also state that the Aldermen cannot increase their salary at any time or the School Board members. They're not allowed to increase their salary. It is tied to an inflation index. It is tied to a set amount. In year 2006, they'd get about \$6400 under the present Governor's salary, Mayor's salary, Alderman's salary. They lose benefits so.

Chairman Dykstra asked what do you mean, they're losing benefits.

Commissioner Shaw responded they will if we adopt another motion to get rid of all benefits. My point is, Madame Chairman, is this, you know. The last time, people wanted to set the wages, and then they even gave the Board of Aldermen the right to change that wage incidentally which was set at \$68,000. It is 1997 that we did that. It's at least six years later. It is too political an issue. It's a demeaning issue, and so therefore I have selected, and I think Mayor Baines in his testimony said he wishes he'd done it, I have selected an answer that it grows. I mean, the Governor's salary is changed by what department heads and other people get in the State, currently about \$102,000. But to put that all off so that nobody has to run for office and say, "I refuse the salary," you know, making that an issue, I've put it off to the year 2006. So, that's my motion. It's number five on that list that I gave you of motions I would like to make tonight.

Commissioner Duffy duly seconded the motion.

Chairman Dykstra stated just to comment, right now, you're talking in three years. I mean, the taxes are going up this year, going up next year probably. I mean, how can you basically know what the economy is going to be and how things are going at that time and to give out kind of raises. I mean that's my concern. We will discuss this, but I do have a concern with that.

Commissioner Duffy stated it seems as though this salary that was set back six years ago and the suggestion to wait three more years to modify it is not consistent with good compensation planning as far as the Chief Executive of the City. It seems that we ought to bite the bullet and establish a new increase of the Mayor's salary and then put into effect a proposal such as the one that's suggested this evening so that we can in fact move forward on this matter.

Commissioner Cook stated along the line, I think of Commissioner Duffy was suggesting. The compensation issues, if they are to be tied together which I'm not sure I'm in favor of or not in favor of, but there are several aspects of the compensation of Mayor, Alderman, and School Board members that seem to me ought to comprehensively addressed. One is the issue of benefits. Are benefits going to be available to School Board members and Aldermen or are they not? You will recall that the School Board does not set the School Board's salary. The Aldermen set the School Board's salary, and the Aldermen set the Aldermen's salary. The School Board doesn't set any elected official's salary, and I haven't heard any proposal that they do so, nor would I make such a proposal, but I think we have seven or eight questions that we have to get at in this compensation question, and while I don't object to Commissioner Shaw's concept, I think Commissioner Duffy is right. If it's going to be a percentage of the Mayor's salary, and if there's a proposal somewhere else on his sheet or we know it's an issue that we have to deal with as to benefits, the benefits issue would affect the compensation issue. The size of the Mayor's salary would affect what the percentage does to them, so I think we need to take a little more comprehensive look at the question before we go at Aldermen and School Boards will be a certain percentage of an unknown Mayor's salary.

Commissioner Pepino stated getting back to Commissioner Duffy, good financial planning. We did all this seven years ago. I don't know. I'm working in the state. They planned 200 years ago, I'd get a hundred bucks, and I'm still getting it. I'm not complaining.

Commissioner Shaw stated just because somebody will work for a hundred dollars doesn't mean that provides us with the best service necessary, okay.

Commissioner Pepino stated when I first ran for Alderman, one my things in my platform was the job was worth a dollar a year, and right now that quote is still in the *Union Leader*. I made that 25 years ago, one dollar a year, so...

Commissioner Shaw interjected well, you know the Governor of the State is working for zero, Alderman. I hope you know that, that Governor Benson has said that he's not accepting his salary. I understand your point, Alderman, that you don't...and who wants to give the Aldermen a raise? I mean, basically, not many people would care to do it, but in the issue of fairness, I mean in a Charter we're supposed to be establishing a government that will be fair, that will treat all people equally, and that's why I said the School Board who I think work as hard as the Aldermen should get the same compensation as the Aldermen even though they might think of themselves as superior to the Aldermen. I found working with them they worked extremely hard in their task. I think that what we're trying to do here, and I hope the people understand what my goal is, is to establish a salary that keeps up with some kind of an index, I didn't say cost of living index, that they should get a raise on that. Okay, and that there is second guessing of our salary because the State has to pass something for the Governor before the Mayor gets anything and before the Aldermen get anything. And it clearly defines what the citizens want. You will get this much money, no more. Now, I've heard a lot of conversation from people who come before the Board of Aldermen. Let's eliminate the health care for Aldermen, the benefit. You see, if the Alderman accepts a Blue Cross plan, the City is self-insured. The total cost, misled to everybody on this Committee and the citizens, is around \$720 a year, the cost of that plan, per year, \$720, if they're self-insured. If one of them should get sick, though, okay, then the cost goes up substantially because we're obligated to pay up to \$100,000 of a sickness for an Alderman, and none of us want to give the Aldermen a hundred thousand dollar benefit. I don't know of anybody that I've met in the public that wants to do that so self-insured, you're misled as to what the cost...if nobody's sick, \$720 times 12. That's our total cost. That's it.

Chairman Dykstra stated just to touch on that a little bit, it's still giving them a raise, and I know about benefits. I've gotten several calls on the fact that they didn't think that elected officials in a part-time position, I don't know where it happens, that they actually get benefits, so I can agree with you there. A lot of employees are working 32 hours and not receiving their benefits, but at a time right now where a lot of people are losing jobs, I don't see how you can give this kind of money out. Taxes are going up in the City. So why are taxes being raised, so people who are not getting increases in their salary are paying for increases in salary? I know you're talking a couple years down the road, but that's just around, that's really just around the corner, so I do have a problem with giving them an increase whatsoever. I believe that if you do not increase their salary that you're



going to have the same people running. They're still going to run, so why can't we save ourselves some money? I don't know why they have to get an increase at all. I'm just opposed to it.

Commissioner Shaw stated can I make a point based on yours. If you gave the Aldermen eight percent of the current Mayor's and you never raised his salary, how much would the Aldermen's pay be? Less than \$5600 a year. Eight percent of \$70,000 is \$5600 a year. How much does an Alderman make at the present time? \$5000. They get health care with it. I have taken away so much that it would discourage some people from running for the office.

Chairman Dykstra asked why don't you just keep them at the \$5000 and take away their health care. Why do we have to give them \$600? Why do we need to give them a nickel? I don't understand.

Commissioner Shaw interjected I find that position to be unfair.

Chairman Dykstra stated I mean, that's just my position but then you're giving the Mayor quite an increase. I didn't vote for the \$68,000 last time, so that's just my viewpoint, and if there's any other discussion here on these salary increases.

Commissioner Duffy stated a point of clarification. I believe there was an amendment made by Commissioner Shaw that we've been discussing.

Chairman Dykstra responded no. It was a motion, Commissioner Duffy, because there was no motion made.

Commissioner Duffy asked and the motion is item number five from your sheet, is that right?

Commissioner Shaw responded New 8.04c.

Commissioner Duffy stated my only comment is we need to do something about the Mayor's salary on an interim basis until this goes into effect, and that could be done as a separate item.

Chairman Dykstra asked right now, though, can't the Aldermen still vote for an increase in the Mayor's salary?

Commissioner Shaw stated I move to table until after we determine the Mayor's salary.

Commissioner Cook duly seconded the motion.

A voice vote was taken. There being none opposed, the motion carried.

Commissioner Soucy stated I'd like to take up item 32 which is oaths of office, and I would like to move that we take the language in the current Charter and incorporate the first sentence, not the second. And I'd like to speak to my motion.

Commissioner Pepino duly seconded the motion.

Commissioner Soucy stated there was a provision in the old Charter, and there is a provision in the new Charter for people to take oaths of office. However, the new Charter specifies what date that will take place, and the Clerk had expressed that that was a problem because it could fall on New Year's Day.

Commissioner Cook interjected...and has.

Commissioner Soucy stated it could fall on the date of a snowstorm, and that was a problem, so I'd like to delete that portion so an appropriate date can be set and retain the oath provision.

Commission Shaw stated I'd like to make an amendment to her motion. Sorry.

Chairman Dykstra stated you have every right.

Commissioner Shaw stated I believe that the Mayor and the Aldermen should take office on the second Tuesday after the election, provided it is not a religious or State holiday.

Chairman Dykstra interjected that's in November, right.

Commissioner Shaw stated it would be in November, okay. In other words, we're moving everybody into office two weeks after the election, giving time to certify the results. Now when you come to the budget portion of our discussion, it's going to be a great advantage to this Board to have those extra 45 days approximately.

Commissioner Tessier duly seconded the motion.

Chairman Dykstra stated now we can have discussion on your motion for them to take office the second Tuesday in November.

Commissioner Shaw stated no, the second Tuesday after the election in November providing it's not a religious holiday or State holiday.

Deputy Clerk Johnson stated can the Clerk make a comment on that? Two weeks after the election might not necessarily include recount, and that's my only...

Commissioner Shaw stated that allowed for recounts.

Deputy Clerk Johnson stated it puts it about five days after the recount, that's all.

Commissioner Shaw stated the Board decides it's own composition anyways. The Board decides. The only office that the Board doesn't decide is the Mayor's position. Why not think the best?

Chairman Dykstra stated oh, I think it's wonderful. It doesn't land on Thanksgiving, does it?

Commissioner Cook responded not on a Tuesday.

Chairman Dykstra stated Carol did have a point, and I wanted to just bring it forth just so we make sure we're doing the right thing about a person's right for a recount and the time frame there. And how do you think it's going to affect it, Carol, for a recount? There's not enough time, is that it?

Deputy Clerk Johnson responded if I'm understanding it right, he's saying two weeks after the election or the second Tuesday after the election. If you have a recount, they are typically allowed to file for a recount, and then we have to schedule a recount with the Board of Recount. That could be the second week after an election before you even know who's going to be elected, and then beyond that, the Clerk's office has to then make arrangements to have the oaths of office taken and send notices out and tell people when it's going to be, so that's my only point.

Commissioner Shaw stated I think all the objections could be researched and always revisited if it's found that something can't be done. Like I believe that all the positions that have been certified could be sworn in. Now your position is that you can't figure out who will be Mayor of Manchester within two weeks. I presume that's impossible, and if we have to go to the election things where if you wish to dispute the election, you have 48 hours to do it, and that the Clerk shall have a recount seven days after the election. Okay, and if there's an appeal of the City Clerk's recount, then that should have to be done within seven more days, then sworn in.

Chairman Dykstra asked so where does that bring you?

Commissioner Shaw stated it's always the prerogative of a Board, I always thought that and we can make sure that's in the rewrite there, that it's the prerogative of the Board to sit who they think has won the election. I don't think we want an election like we just had with the County Attorney where nobody gets the job.

Chairman Dykstra interjected well, he finally got the job. Right now, your motion is on the floor, to make it the second Tuesday after the election in November to be seated. Is that correct, basically?

Deputy Clerk Johnson noted...to take their oaths.

Commissioner Shaw stated his motion was an amendment to...

Chairman Dykstra asked...but you still want to keep that motion to the second Tuesday after the election in November?

Commissioner Shaw responded I think that in the rewrite you would find that we would say this, and the person who held the office will keep the office until such time as his replacement has been certified.

Chairman Dykstra stated you don't want to move it to December first.

Commissioner Shaw responded I'm just saying that when we do the rewrites, you'll see all the technicalities will be taken care of. If the Mayor isn't ready to be sworn in, then the current Mayor would keep his position until such time. So, I mean, that's in the rewrite.

Commissioner Hirschmann stated so there could be 24 Aldermen and two Mayors at the same time.

Commissioner Shaw responded no, no, no. No, there's only one Alderman until somebody is sworn in to take their place.

Chairman Dykstra stated so you're going to cut their term by two months.

Commissioner Shaw responded for one Mayor only.

Chairman Dykstra stated I thought it was a two-year term. How do you get around that?

Commissioner Shaw stated they all have two-year terms after the first one.

Chairman Dykstra asked if someone runs for a two-year term, how do you tell them to leave in November?

Commissioner Tessier responded that will only happen the first time.

Chairman Dykstra stated yes, but still, when they ran...

Commissioner Shaw interjected it's almost seven o'clock, and one of our Committeemen has to leave, so can we move.

Chairman Dykstra stated we're going to take a vote on the amendment to Commissioner Soucy's motion to make it the second Tuesday after the elections in November. Call for the vote.

Commissioners Cook, Duffy, Pepino, Shaw, Tessier, and Wihby voted yea. Commissioners Hirschmann, Soucy, and Dykstra voted nay. The motion carried.

Chairman Dykstra stated now that we passed the amendment, we have to vote on the main motion as amended, is that correct?

Deputy Clerk Johnson noted the main motion as amended basically is what the amendment is.

A roll call vote was taken. Commissioners Cook, Duffy, Shaw, Tessier, and Wihby voted yea. Commissioners Hirschmann, Pepino, Soucy, and Dykstra voted nay. The motion carried.

Commissioner Shaw stated, Madame Chairman, one of our members desired to leave at seven o'clock, the clock approaching that hour.

Chairman Dykstra stated I didn't hear that.

Commissioner Shaw stated I wonder if for the rest of...I know that if somebody leaves, they leave, that's it. But I would hope that some of the next motions that we make be more procedural versus substantive, like the Mayor's salary and things like that. If you would so honor us with that.

Chairman Dykstra stated I was not notified of anyone leaving here early.

Commissioner Duffy stated Madame Chair, let me speak to that matter. If I may, I'm fortunate enough to hold a ticket to the Monarchs game tonight that started at seven o'clock, and Commissioner Shaw was good enough to be sensitive to that.

I'm willing to stay the course to the extent that there is substantive things that are going to be discussed this evening.

Chairman Dykstra stated well, I certainly would be sensitive if I would have known and so I certainly would have been. Right now, it's certainly the will of this Commission what they want to do. We can continue...

Commissioner Hirschmann stated I'd like to take up new business, and I empathize with our colleague. I'm sorry. Item 23, Article 6, budgets and appropriations. I want to make a motion to reference Item 6.04 of the 1983 Charter saying that we adopt Item Section 6.04 budget adoption, and let me just see if I want to change anything in the language.

Chairman Dykstra asked that's in the old Charter?

Commissioner Hirschmann responded yes. 6.04 budget adoption of the old Charter. If the Mayor and Aldermen cannot decide on a budget on a certain day, under the new system, the Mayor's original budget which was worked out in early March becomes law, and that has not proved effective in the past five to six years. I don't know that the Mayor has ever had one pass, but it could be an awful situation because the Mayor often has early numbers in his budget, so the Aldermen always try to work on it, but I think that the taxpayers are looking for a guarantee that something is going to be hammered out by the Aldermen by a certain time, and that's why I would favor 6.04 of the old Charter.

Chairman Dykstra asked does everyone have a copy of 6.04 and know what it states?

Commissioner Shaw asked what if, as we've been instructed, 6.04 is against State law? In other words, we cannot send a Charter to the citizens with something that's illegal, that's against State law. Could we say that until State law is changed that our position that we follow State law, but second that once State law is changed, then the fallback position of this Charter shall be what I presume you said last year's budget.

Commissioner Hirschmann responded I would like that.

Commissioner Shaw stated I don't see how you can pass a Charter amendment that totally conflicts with State law, as some people are telling us that it does. I mean, you got to believe Mr. Cook once in a while. It's a requirement.

Commissioner Hirschmann stated I would like to make the amendment that Mayor Shaw presents is that the fallback provision of this section becomes the previous year's budget.

Commissioner Shaw stated the fallback is the position until such time as State law allows a local community to choose another method. You know, the fallback position being the Mayor's. And then if state law is changed and it says that you can utilize last year's budget as the fallback position, that would be our Charter.

Commissioner Cook stated there has been a lot of discussion about the fallback budget provision, and as was indicated in some of the public testimony and as those who were on the last Charter Commission will recall, we didn't have a fallback budget provision in our Charter when we drafted it the last time, and we sent it to the State for review, and it came back, and they indicated that under the provisions of 49-C:23 I, we had to have a fallback provision which is where the fallback provision came from. The last Charter Commission has been accused of coming up with that as some kind of deep, dark plot. The provisions of 49-C:23 I say, a budget submission date and a date by which an annual budget shall be finally adopted by the elected body, the Charter shall provide "failing final adoption by the established date, the budget as originally submitted by the Chief Administrative Officer shall become the budget". That's where it came from. When they sent it back from the State, they said, "You haven't complied with 49-C:23." What had happened since the 1983 Charter is in 1991, 49-C was passed. 49-C had all kinds of provisions, many of which we've incorporated into the Charter tonight, the enforcement provision, various other provisions. And the review by the State required the inclusion of that provision. That's where it came from, and to delete it I predict or I would assume would have the same results by the reviewing people in Concord. They'd send it back and say, "You didn't comply with the statute."

Commissioner Hirschmann stated just a point on that. I'm not saying to delete the fallback provision. I'm saying to change the fallback provision so there would be a fallback provision in our new Charter, but it would be quite different than what exists in the 96 Charter.

Commissioner Cook responded but what I'm saying to you is what exists in the 96 Charter is the exact language in the statute which says "failing final adoption by the established date, the budget as originally submitted by the Chief Administrative Officer shall become the budget". That's the only one that's allowed.

Deputy Clerk Johnson stated maybe we can help a little bit here. According to the provision of State law, the Mayor's budget has to be the one as the fallback under

the Charter at the present time. My understanding that Commissioner Shaw was trying to suggest to you is perhaps that in the event that State law is changed that the fallback provisions of this Charter shall be the previous year's budget. So if the law doesn't force you to use the Mayor's budget, then it would be the previous year's budget because if you send it back with the previous year's budget, it will be kicked back to you. The State law doesn't allow you to do that. They'll make you change it. So what we could do is suggest that the motion might be to ask the Solicitor to draft you language for the next meeting that would allow you to adopt the previous year's budget as a fallback provision provided that State law allowed you to do so.

Commissioner Hirschmann stated I make that motion.

Commissioner Shaw stated everybody brings up something about this budget law or some kind of a thing up there in Concord. I don't know the exact terminology. Were communities required to accept those provisions? You know what I'm...the wording. Is there such a thing as a budget law in the communities?

Deputy Solicitor Arnold responded there are a couple of budget laws, but the Municipal Budget Act, I hope I'm referring to the right one, did require that it be adopted by the municipalities.

Commissioner Shaw asked have we ever done that?

Deputy Solicitor Arnold responded no, we have not.

Commissioner Shaw asked are we required then to comply with it if we've never adopted it? That's the point.

Commissioner Cook stated this isn't in that law.

Deputy Solicitor Arnold stated maybe if I could clarify. The provision that Brother Cook has referred to is 49-C which is the provisions for adopting a Charter. He is not referring to the Municipal Budget Act.

Commissioner Shaw stated...separate from, so we have to comply with that law, no matter if we chose to or not. So it seems to me the motion is what the Clerk was describing that Commissioner Hirschmann has made with the fallback, fallback, being if State law should change, then our fallback position would be last year's budget.

Commissioner Hirschmann stated I'd move as the Clerk stated the motion.



Deputy Clerk Johnson stated the motion is to request the City Solicitor to submit language at the next meeting that would provide that the fallback provisions of this Charter will be the previous year's budget provided it is within State law. If State law allows it, then you will have that fallback provision. So therefore, if somebody goes up, and they petition the Legislature and get the law changed, our fallback provision at that point will be the previous year budget.

Commissioner Duffy duly seconded the motion.

A roll call vote was taken. Commissioners Duffy, Hirschmann, Pepino, Shaw, Soucy, Tessier, Wihby, and Dykstra voted yea. Commissioner Cook voted nay. The motion carried.

Chairman Dykstra stated we've done a lot tonight, so we're going to probably go on for another 15 minutes or so, if you wish to and if there's anything else.

Commissioner Pepino stated item 22. That's a very simple one. That should be done.

Chairman Dykstra stated so you're moving that the ward boundary lines be noted in the Charter.

Commissioner Pepino responded yes.

Commissioner Cook duly seconded the motion.

Commissioner Duffy stated we heard the testimony from some of the people appearing before the Commission. It's helpful to have that. My sense is that that could be listed as an appendix to the Charter since there are occasional changes in the ward boundary lines and rather than having it as part of the Charter, the language itself, it more appropriately in my estimation belongs as an attachment or in some fashion connected, and I'm sure we're going to have some comments from the Clerk on this.

Commissioner Shaw stated in the 1987 Charter, they were an appendix to the Charter. There were pages that listed them down. They were not part of the Charter. Really and truly, you shouldn't put anything in the Charter unless you made some kind of provision that contrary to what the voters had voted would be the ward lines. When changed, the City would have to automatically change. We have no control over that, that particular subject. The Aldermen have control over it. Really and truly, Alderman, it should not be in the Charter. It'll be changed in eight more years, seven more, six more, after the Charter passes. It shouldn't be there.

Commissioner Cook stated I don't disagree with either what Commissioner Shaw just said or what Commissioner Duffy said about how they are included. The question in my mind, because I think it takes up a huge amount of space in the Charter and then when you've had a ten year census and you've redrawn your ward lines and they've passed, you've got an inconsistency in your Charter, and you've got an inconsistency what the wards are, and it causes confusion. My confusion, and I wish Mr. Arnold were here, is 49-C:3 that says, "The City shall continue to be divided into the same number of wards as constituted (as constituted, which means as drawn) at the time of the adoption of a Charter hereunder and the general laws relative to wards of cities, officers of such wards, and voters checklists, elections, and jurors shall be applicable to the wards." There's something in my mind that says that in the last Charter we got advice from some place that that referred to the inclusion of the ward lines in the Charter, and I guess I'd like advice from the Clerk on do we have to because if we don't have to, I don't want to, but I certainly think we could put them on as an appendix for reference sake which I think would accomplish the same thing, but I'm not sure how 49-C:3, what it requires us to do or not to do and I'd like to get an answer to that question because I think it junks it up.

Deputy Clerk Johnson stated the answer to the first question that you're asking, 49-C:3, I would prefer that to be interpreted by the Solicitor. What I can tell you is the Clerk's office had recommended that the boundaries remain in the Charter. If you don't have them as part of your Charter, it gives the State the right to come in and set your ward boundaries, and we saw that in the situation of the state redistricting recently, and we still have a problem in Ward 6 where they are in three... Ward 6 is three separate House districts. We have to do three separate ballots for the House for one district because they did not accept the ward boundaries of the city. We have a bill at the State Legislature to do that, to say accept the City ward boundaries that was accepted by the voters of Manchester. The State has the authority to set your ward boundaries if you don't do that by the voters, if it's not stated in your Charter.

Commissioner Cook stated I understand your point, but those particular ward boundaries that they didn't accept are the successor ward boundaries to the ones in the Charter and they would have been in the Charter if we...

Deputy Clerk Johnson interjected they are in the Charter now.

Commission Cook stated they're in the Charter, and they didn't accept it so putting...

Deputy Clerk Johnson stated let me clarify that. The court did not accept the City's ward boundaries under its court decision for the House districts. For the Senate districts, it didn't matter, but for the House districts it did because those are broken down by the wards.

Commissioner Cook stated my question is much less esoteric than your answer. My question is does putting them in an appendix that is referred to in the Charter itself have the same effect as having them in the Charter itself. That's apropos of Commissioner Duffy's question. They're still described. The boundaries are still set forth, but in the body of the Charter where we have had several people note and I think accurately you read along in this thing and then you get to this massive section of "go up Union Street and take a left and take a right and go down three houses and take a right", can that be an appendix and have the same effect? That's the essence of my question.

Deputy Clerk Johnson stated it would have to be an appendix to the Charter, I would presume. I mean that's a question for the Solicitor's office.

Commissioner Cook responded right, and that's my question.

Commissioner Shaw asked are we required as a City to have a one man, one vote? In other words, is it the right of Manchester to have wards that are set in concrete that are ours that deny people the right to an equal representation? That is why you have ward boundaries drawn every ten years, because we have a census figure. Who can change the Charter and make sure that every citizen has his vote being counted for his Rep? I mean Ward 6 could grow by leaps and bounds, and Ward 1 could diminish, and therefore Ward 6 must give up some of its citizens for the right of everybody to have one man, one vote, and I thought sure that was guaranteed by the Supreme Court of the United States. So therefore putting it in the Charter, you want to make it a rock. I think that that is inconsistent with Supreme Court doctrine that every citizen of Manchester every ten years is entitled to his vote to be counted for his Rep and that it be proportionate. So putting it in the Charter I think is totally wrong. It's putting a rock where we need a mattress.

Commissioner Soucy called a point of order, asking that the motion be restated.

Deputy Clerk Johnson stated the motion was to put the ward boundaries into the Charter.

Commissioner Cook stated could I make a motion to table pending the advice of the Solicitor next week?

Chairman Dykstra stated you may certainly make a motion.

Commission Cook stated because I'd like to get the answers from the Solicitor because I think that'll guide us in what the right...

Commissioner Shaw seconded the motion.

There being none opposed, the motion carried.

Commissioner Hirschmann brought up item 20 on the agenda, stating it's political reports for campaign contributions and expenditures. I looked in the red book. It says it's Section 5.20 (5.29K), item of reports, and what I wanted to amend that to say is that all contributions and expenditures shall be reported, not starting at \$500 because what you're doing is you're leaving an invisible soft money situation where people are collecting money in campaigns and not reporting, so I would like to just close that loophole and report all contributions and expenditures.

Commissioner Shaw duly seconded the motion.

Commissioner Soucy stated with respect to Commissioner Hirschmann's motion, I don't have a problem with that motion, but I would like to take up that whole issue in greater detail, and I just want to put the Board on notice. The present system as we have it is very different from what State law provides. I'm not saying it's in conflict. I'm just saying it's different, and it doesn't make sense, and the reporting piece needs a great deal more work, so I will support that motion, but there are certainly other issues that need to be explored in that regard.

Commissioner Hirschmann stated I'm going to stay with the motion, and we can change, work on it, committee it, whatever.

Chairman Dykstra stated is there any further discussion on that. If not, Carol, can you just state the motion.

Deputy Clerk Johnson replied that's what I'm clarifying. 5.29 K?

Commissioner Hirschmann responded K, with regards to reports. One and two reflect a \$500 amount. I'm going to try and change that to dollar one, I guess.

Deputy Clerk Johnson stated that all contributions be reported. We'll fix that language.

Chairman Dykstra stated that all contributions be reported. What was the rest of it?

Deputy Clerk Johnson responded right now, sections one and two indicate that anything in excess of \$500 needs to be reported. The change would be from dollar one.

A roll call vote was taken. Commissioners Cook, Duffy, Hirschmann, Pepino, Shaw, Soucy, Tessier, Wihby, and Dykstra voted yea. The motion carried.

Commissioner Hirschmann stated I know everyone wants to adjourn. What I was going to ask the Commission is that we've gone such a long way with an old Charter, with a new Charter, that we've adopted many things and amended many things. Could we ask at this point for some type of a draft to see what we're working from now.

Deputy Clerk Johnson stated we've already been working on one.

Chairman Dykstra stated they're working on it.

Commissioner Hirschmann stated and we'll call that the 2003 Charter.

Deputy Clerk Johnson stated we'll bring what we have at the next meeting.

Chairman Dykstra stated I think we did a lot tonight. I really commend this Commission for really getting a lot done.

There being no further business to come before the Commission, on a motion by Commissioner Cook, duly seconded by Commissioner Soucy, it was voted to adjourn.

Respectfully submitted,

Deputy City Clerk

Approved for Commission: \_\_\_\_\_  
Donna M. Soucy, Secretary